they of course accept, that informal notice had been given to the respondent's advisors a few days before the hearing but Mr. Rajan explained that he personally had first heard of the matter when he arrived in London about three days before the hearing. Mr. Rajan objected to the argument being presented without proper notice and without having been formulated in writing.

Their Lordships are of opinion that it would not be proper for them to entertain the new argument in this case. No proper notice of it has been given to the respondent, and the respondent's counsel has had no opportunity to consider it and, if necessary, to take instructions upon it. At the very least an adjournment for those purposes would have been required and no Motion for such an adjournment was made on behalf of the appellant. Their Lordships understand that the new argument would have been based upon provisions in the Constitution (Amendment) Act, 1976 which purport to take effect retrospectively and thus to deprive the respondent of a vested right which has already been affirmed by the High Court and by the Federal Court in these proceedings. This attempt to deprive a litigant of a right of property by retrospective legislation passed *pendente lite* is a step of a most unusual character; and that makes it all the more necessary that the respondent should have had an adequate opportunity of meeting the argument, before their Lordships could consider it.

For these reasons their Lordships will advise the Yang Dipertuan Agung that the appeal should be dismissed and that the appellant should bear the cost of the appeal.

Appeal dismissed.

Solicitors: *Stephenson, Harwood & Tatham; Philip Conway Thomas & Co.*

SINGAPORE REPORTS

TOMLINSON ANTIQUE HOUSE v. LIM MENG WAN & ANOR.

[O.C.J. (Rajah J.) February 11, 1977]
[Singapore — Suit No. 3940 of 1976]

Landlord and Tenant — Claim for declaration that applicants are tenants of premises — Premises rent controlled — Agreement for rent above controlled rent — Interim injunction.

The plaintiffs, a firm, applied for a declaration that they were the tenants of certain premises and an injunction against the defendants. It appeared that the tenancy agreement was entered into before the formation of the firm and that it provided for payment of rent above the controlled rent.

Held: (1) there was no privity of contract between the firm and the defendants and therefore the firm could not maintain the action or seek an injunction;

(2) the court could not lend its aid to enforce a tenancy agreement, where one of the terms to wit that relating to rent was unenforceable;

(3) as there was no real prospect of the plaintiffs succeeding in his claim for a permanent injunction the court did not have to go on to consider whether the balance of convenience lay in granting or refusing the interlocutory relief sought.

Case referred to:-

(1) *American Cynamid* v. *Ethicon Ltd.* [1975] 2 W.L.R. 316, H.L.

CIVIL SUIT.

Tony Lee for the plaintiff.

Khor Thian Beng for the defendants.

Rajah J.: In this matter the plaintiffs, Tomlinson Antique House (a firm) by virtue of a writ issued on December 6, 1976 seek: —

(i) a declaration that they are the tenants entitled to possession of Nos. 3, 5 & 7 (except the ground floor of No. 5) Tomlinson Road, and

(ii) an injunction in the usual terms to restrain the defendants from doing certain acts enumerated in the writ.

On an *ex parte* application supported by an affidavit by one Tan Hor Teng alias Tan Tien Chi, one of the two partners in the firm, and heard on December 6, 1976 the plaintiffs obtained an interim injunction until after the hearing of a motion returnable on the 14th day of January 1977 or until further order. On the 14th day of January the motion was adjourned for two weeks and the interim injunction was extended by consent for a further two weeks. The statement of claim was filed by the plaintiffs on January 26. The motion which came up before the court on January 28 was adjourned for hearing to a date to be fixed by the Registrar and the interim injunction was to continue until further order. Accordingly the motion now comes up for hearing.

It is clear from the affidavits filed by Tan Hor Teng and paragraphs 1 and 2 of the statement of claim that the facts at best for the plaintiffs is that the tenancy agreement, if any, was entered into between Tan Tien Chor and the 1st defendant, part owner of the premises in dispute. The firm did not come into existence until November 15, 1976 (Certificate of Business Registration). This being so the whole action is misconceived as the plaintiff firm cannot be the proper party

to commence proceedings as there was no privity of contract between the firm and the defendants. The proceedings should have been commenced in the name of Tan Hor Teng alias Tan Tien Chi against Lim Meng Wan. The second defendant should not have been made a party to the action. "The person to maintain an action for specific performance of a contract for a lease must in general be either the intended lessor or the intended lessee or the representatives in interest of either" (*Woodfall* on Landlord and Tenant, 27th Edition page 173, para. 406). As in the circumstances the firm cannot maintain this action then it follows that the firm cannot seek an injunction in respect of a contract entered into between Tan Hor Teng and Lim Meng Wan. This factor alone is in my view enough to dispose of the matter before me today.

Further it is accepted on both sides that the premises in question are rent controlled premises and that the rental of $1,900 a month is well beyond the controlled rent. What the plaintiffs are in effect asking the court to do is to lend its aid in furtherance of an illegal contract. Tan Hor Teng in agreeing to a rent of $1,900 a month knew that it was beyond the controlled rent. He nevertheless agreed to it and now seeks the aid of the court to aid him on this. *Woodfall* on Landlord and Tenant (27th Ed.) page 160, para. 375 has this to say: —

"In an agreement for a lease of rent-controlled premises the prospective tenant agreed to pay rent in excess of the standard rent. Evershed J., while not expressly deciding the point, as he held that there was no final and binding contract, doubted whether the court would order specific performance of an agreement of which one of the terms was to the knowledge of the court not wholly enforceable."

The material available to the court on the hearing of this application for an interlocutory injunction does not disclose that the plaintiff firm has any real prospect of succeeding in their claim for a permanent injunction at the trial and on the authority of Lord Diplock's statement in *American Cynamid* v. *Ethicon Ltd.*[1] at page 323 C-D, the court does not have to go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

I therefore discharge the interim order and dismiss the motion with costs.

Order accordingly.

Solicitors: *S.K. Lee & Co.; Lim Sim & Thian Beng.*

P.B. CHAPMAN v. DEPUTY REGISTRAR OF COMPANIES

[O.C.J. (Wee Chong Jin C.J.) March 10, 1977]

[Singapore — Originating Motion No. 12 of 1967]

Securities — Cancellation of dealer's representative's licence — Issue of false contract notes — Securities Industry Act, 1973, ss. 2, 10, 15, 17 and 23.

In this case the appellant appealed from the decision of the Deputy Registrar of Companies ordering the cancellation of the dealer's representative's licence held by him and ordering that the appellant be permanently disqualified from holding such a licence. It was admitted by the appellant that he had issued two contract notes which were false in stating that shares were sold and purchased on August 6, 1971 when in fact the sale and purchase took place in December 1971. In his defence the appellant stated that he acted on the instructions of Pinder, who was then a director of Sime Darby Ltd. and that he had no reason then to doubt the truth of the information.

Held: (1) the clear inference is that the appellant must have known that the sale and purchase of the shares took place in December 1971 and not on August 6, 1971, as stated in the contract notes;

(2) on the facts before him the Deputy Registrar's decision to cancel the appellant's licence was correct;

(3) although the contract notes were issued before the coming into force of the Securities Industry Act, 1973, section 23 of the Act does not limit the Deputy Registrar to have regard only to facts which fall within the "relevant period" specified in section 17(1);

(4) there appeared to be no element of dishonesty or criminality in the acts of the appellant to merit the extreme penalty of permanent disqualification and the order of permanent disqualification should therefore be set aside.

ORIGINATING MOTION.

C. Darvall Q.C. (*T.H.A. Potts* with him) for the appellant.

Glenn Knight (State Counsel) for the respondent.

Wee Chong Jin C.J.: This is an appeal from the decision of the Deputy Registrar of Companies ordering the cancellation of the dealer's representative's licence held by the appellant, Peter Barry Chapman, and ordering that the appellant be permanently disqualified from holding such a licence.

The determination of the appeal involves the consideration of the Securities Industry Act, 1973, in particular the following sections: —

"Section 2(1). In this Act, unless the context requires otherwise —

'dealer' means a person who carries on the business of dealing in securities as a corporation...;

'dealer's representative' means a person by whatever name described... who performs for that dealer any of the functions of a dealer...' and includes any director... of the corporation who performs for the corporation any of the said functions...'

'dealing in securities' means (whether as principal or agent) making... with any person..., any agreement for or with a view to acquiring, disposing of... securities;

'Registrar' means... and includes any Deputy Registrar of Companies;

'representative' means a dealer's representative...;

'securities' means... stocks and shares in a public company....

Section 10. No person shall act as a dealer's representative unless he is the holder of a dealer's representative's licence....

Section 15. The Registrar shall grant or renew a representative's licence if after consideration of the application he is of the opinion that the applicant is a fit and proper person to hold the licence applied for.